THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14046 OF 2005

Dated: 5th October, 2005.

Between:

1. C. Prasad Reddy
2. N. Subrahmanyam … Petitioners

And

1. The Superintendent of Excise,

Prohibition & Excise Department,

Chittoor and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14046 OF 2005

ORDER :

This writ petition is filed challenging the action of the respondents 1 and 2 in permitting the respondent No.4 to do business in sale of Indian & Foreign Liquor in Shop No.3, Ramakrishna Paradise Apartments, Door No.5-5-326, Reservoir Road, Tirupati as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India as well as the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 (for short, 'the Rules').

The petitioners claim to be the residents of Flat Nos.206 and 509 of Ramakrishna Paradise Apartments bearing Door No.5-5-326, Reservoir Road, Tirupati. It is stated that the said Ramakrishna Paradise Apartments consists of 55 residential flats and 10 shops in the ground floor apart from the cellar for parking of the vehicles of the residents of the apartments. All the 10 shops are situated inside the compound wall of the apartments which were constructed with a view to provide amenities to the residents of the flats. While so, the third respondent herein purchased one of the said shops i.e, Shop No.3 in which he intended to start retail liquor business from 1-7-2005 onwards. Having come to know of the same, the residents of the said apartments including the writ petitioners gave a representation dated 23-6-2005 to the 2nd respondent – Inspector of Excise, Prohibition & Excise Department, Tirupati Circle marking a copy to the 1st respondent – Superintendent of Excise, Prohibition & Excise Department, Chittoor, in which they have explained the topography of the area and requested the respondents 1 and 2 not to permit the proposed business of the fourth respondent keeping in view the nuisance that would be caused by such business resulting in inconvenience to the residents of the apartments. However, the respondents 1 and 2 failed to consider the same and permitted the respondent No.4. Hence, this writ petition seeking a declaration that the said action of the respondents 1 and 2 is arbitrary and illegal. The petitioners also alleged that a Municipal High School is situated just adjacent to the proposed shop on the Northern side of the apartments. Apart from that, a Primary Health Centre and S.V.I.M.S. Hospital are also situated nearby. Thus, according to the petitioners, apart from the inconvenience and embarrassment to the residents of the flats since the proposed liquor shop will be situated within the compound wall of the apartments, it is also in contravention of Rule 6 of the Rules which mandates that no liquor shop would be opened within 100 mts. of Hospital, School and Place of Worship.

On behalf of the respondents 1 and 2, a counter-affidavit has been filed stating that the 4th respondent is the successful bidder in the auction conducted for grant of privilege of sale of Indian Liquor and Foreign Liquor by Shop in respect of Shop No.3 in Ward No.5 of Tirupati Municipality for the lease period from 1-7-2005 to 30-6-2006 for the lease amount of Rs.16,50,500/-. He has paid the 1/3rd lease amount of Rs.5,55,000/- as required under Rule 18 of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 and also deposited 2/3rd lease amount of Rs.10,95,000/- in the shape of B.G.No.8/2005, dated 15-6-2005 issued by State Bank of Hyderabad, Tirupati in compliance with Rule 19 and Counterpart Agreement as required under Rule 22 of the said Rules and applied for grant of a licence at the premises bearing D.No.5-5-326, Reservoir Road, Ramakrishna Paradise Complex, Room No.3 Tirupati of Tirupati Municipality. The Prohibition & Excise Inspector, Tirupati and the Sub-Divisional Prohibition & Excise Officer, Tirupati, after due inspection of the said premises have recommended for grant of a licence in Form A-4, as the proposed location of the shop is in conformity with the location/area notified in Chittoor District Gazette No.50/2005, dated 26-5-2005 and it is in accordance with Rule 27 of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005.

The fact that the residents of Ramakrishna Paradise Apartments filed a representation on 25-6-2005 raising objections against the location of the shop in the premises bearing Door No.5-5-326 has not been disputed. It is explained that the said representation was forwarded to the Sub-Divisional Prohibition & Excise Officer, Tirupati for immediate enquiry with regard to the objections raised. Having made the necessary enquiry in the locality in the presence of Sri K. Pravin Kumar Reddy, President of the Association, the 2nd petitioner herein who is the Secretary of the Association and Sri S. Munikrishnam Raju, Treasurer, the Sub-Divisional Prohibition & Excise Officer submitted a report dated 26-6-2005. In the said report, it was stated that during the enquiry it is found that the selected premises is 100 mts. away from places of Public Worship, Educational Institutions and Hospitals and the restrictions imposed under Rule 27 of the said Rules do not attract to this premises. Regarding the other allegations shown in the petition about existence of the Nehru

Municipal High School, Government Health Centre and SVIMS Hospital, it was stated that the same are 100 mts. away from the selected premises. In view of the enquiry report of the Sub-Divisional Prohibition & Excise Officer, Tirupati inasmuch as the selected premises does not attract the restrictions laid down under Rule 27 of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (G.O.Ms.No.998, Rev. (Ex-II) Department, dated 24-5-2005), the licence in Form A-4 has been granted to Sri Y.Kamala Kumar Reddy on 30-6-2005 vide proceedings Rc.No.976/2005/A1, dated 30-6-2005 and Licence No.21/2005-06 dated 30-6-2005. Hence the action of the respondent No.1 in granting the licence in Form A-4 to Sri Y.Kamala Kumar Reddy is strictly in accordance with the Rules. It is further stated that Rule 27 of the Rules does not prohibit grant of Form A-4 (Retail sale) licences in residential areas. As per the licence conditions, the licensee is permitted to sell all kinds of Indian Liquor and Foreign Liquor and Beer in sealed receptacles at the licensed premises. As such, no inconvenience is anticipated to the residents of the apartment. Further, the enquiry of the Sub-Divisional Prohibition & Excise Officer, Tirupati reveals that the Nehru Municipal High School, Government Health Centre and SVIMS Hospital are situated 100 mts. away from the selected premises and hence Rule 27 of the Rules does not attract. As such, the objections raised by the petitioners are not maintainable as per law.

A separate counter-affidavit has been filed by the respondent No.4 reiterating the stand taken by the respondents 1 and 2 and further stating that the Ramakrishna Paradise Complex, Reservoir Road, Tirupati is earmarked for commercial use as per the Master Plan approved by the Government vide G.O.Ms.No.149, M.A., dated 21-3-2005. Since the property is in the commercial area, it is not open to the writ petitioners to raise any objection against establishment of a liquor shop. It is stated that he is the owner of the premises in question and having been granted the lease, he paid a sum of Rs.18 lakhs towards licence fee and that the respondents 1and 2 after due inspection approved the premises and granted the necessary licence in his favour. The said order is in accordance with law and does not warrant any interference.

I have heard the learned Counsel for the writ petitioners, the learned Government Pleader appearing for the respondents 1 and 2 as well as the learned

Counsel for the 4th respondent.

It is to be noted that though initially respondent No.3 was made a party to the writ petition alleging that he purchased Shop No.3 and was proposing to establish the shop for sale of liquor, subsequently from the counter-affidavit filed by the respondents 1 and 2, it came to light that one Y.Kamalkumar Reddy is the owner of the said Shop No.3 and a licence has been granted in his favour to run a shop for sale of liquor in the said premises. In the circumstances, the said Y.Kamalkumar Reddy has been impleaded as respondent No.4 to the writ petition by order dated 19-8-2005 in WPMP.No.21293 of 2005 and the prayer in the writ petition has also been suitably amended. Since no relief is claimed against the third respondent, who has nothing to do with the business in question, the writ petition shall stand dismissed against the third respondent.

Coming to the merits of the case, it is relevant to note that in exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, the Governor of A.P. made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 in which the procedure to be followed for granting the leases as well as issuance of licences has been provided in detail. Rule 27 of the said Rules which deals with the selection of premises for establishing the shop for sale of liquor, to the extent it is relevant, runs as under :

> *"**27. Selection of Premises** :-*
>
> *(1) The successful tenderer **subject to the approval** of Proh. & Excise Superintendent, shall select **suitable premises** for sale of IL & FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be notified in the District Gazette. It shall be at least 100 meters away from the places of Public worship, Educational Institutions, Hospitals and 50 Meters away from Highways except in Municipal Corporations and 5Kms belt area of the periphery of Municipal Corporations.(**emphasis supplied**)*
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> *Explanation:- … … … … … … … …"*

It is true that on a reading of the above Rule, it appears that location of the licensed premises is prohibited within the prescribed distance only from the places of Public Worship, Educational Institutions, Hospitals and Highways. However, the learned Counsel for the petitioners contends that while assessing the suitability of the premises selected by the successful tenderer, the Prohibition & Excise Superintendent, if necessary, can go beyond the requirements specified under Rule 29 of the Rules and it cannot be said that once the conditions under Rule 27 are satisfied, the competent authority is bound to grant the licence regardless of any other objections raised by the residents of the locality.

On the other hand, the learned Government Pleader as well as the Counsel for the fourth respondent vehemently contended that the action of the 1st respondent in issuing the licence in favour of the fourth respondent to carry on the business in the premises in question is in accordance with the procedure contemplated under Rule 27 of the Rules. It is further contended that since the said Rule does not contemplate any prohibition with regard to location of the shop for retail sale of liquor in residential areas, the objections raised by the petitioners are untenable and the writ petition is misconceived.

Having regard to the rival submissions advanced, the only question that arises for consideration is whether while assessing the suitability of the premises, is it obligatory that the rejection shall be confined only to the grounds specified in Rule 27 or is it open to the competent authority to take into consideration any other objections raised by the residents of the locality, particularly the neighbourhood.

A perusal of Rule 27 of the Rules, extracted above, with particular reference to the words "***subject to the approval***" and "***suitable premises***" makes it clear that the Legislature intended to confer some amount of discretion on the Prohibition & Excise Superintendent in the matter of deciding suitability of the premises. There is nothing in the Rule to indicate either expressly or impliedly that once the conditions specified under Rule 29 are satisfied, the Prohibition & Excise Superintendent is bound to grant the licence. On the other hand, the words "subject to the approval" and "suitable premises", undoubtedly indicate that while assessing the suitability of

the premises selected by the successful tenderer the Prohibition & Excise Superintendent, if necessary, can go beyond the requirements specified under Rule 29. Having regard to the particular facts and circumstances, even after compliance with the requirements under Rule 29, the Prohibition & Excise Superintendent in exercise of his discretion may decline to approve the premises selected by the successful tenderer. However such exercise of discretion shall not be arbitrary or unreasonable, but must be based upon cogent material having nexus to the purpose sought to be achieved.

A Division Bench of this Court in ASST. COMMISSIONER OF PROHIBITION & EXCISE vs. K. VIDYA SAGAR while considering the scope and object of Rule 6 of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993, which is identical to Rule 27 of the Rules, held as under :

> *"… … the requirement of Rule 6 cannot possibly be said to be a hard and fast requirement having due regard to the language used and as such we feel it convenient to record that the same is merely illustrative in nature. A suitable place has to be selected having due regard to the requirement as laid down in Rule 6, but that does not mean and imply that the chapter ends there, otherwise the words "suitable" and "subject to approval" would be rendered totally otiose and nugatory."*

For ready reference and proper appreciation, Rule 6 of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 may be extracted as under :

> "6. Selection of Premises:-
>
> (1) The Auction purchaser, subject to the approval of the Assistant Commissioner of Prohibition & Excise, shall select a suitable premises of the location of the shop within the village or locality, as the case may be notified in the Gazettee. It shall be atleast Hundred (100) meters away from the places of Public Worship, Educational Institutions, Hospitals and Highways except in the limits of Municipal Corporations.
>
> Explanation:- xxx xxx xxx xxx xxx xxx"

It is relevant to note that in the said case, the Division Bench was dealing with

identical facts wherein certain objections were raised by the neighbours of the locality and basing on the same, the competent authority rejected the application of the licensee for establishing the shop at the proposed premises. Though the learned Single Judge allowed the writ petition holding that the respondent acted in excess of his authority, on an Appeal, the Division Bench disagreed with the said view and reversed the order in the writ petition.

In the light of the ratio laid down by the Division Bench in the above case and having regard to the language of Rule 29 of the Rules, it appears to me that the respondents 1 and 2 committed an error in rejecting the objections raised by the petitioners only on the ground that the same do not fall within the purview of Rule 27 and that under the said Rule grant of licence in residential area is not prohibited.

Having regard to the undisputed fact that the premises in question is admittedly situated in Ramakrishna Paradise Apartments, in which it is claimed that there are 55 residential flats, the respondents ought to have enquired into the objection raised by the petitioners that the location of the shop in the said premises would embarrass and inconvenience the residents of the flats particularly the women and children. Without application of mind to the said aspects and without making the necessary enquiry into the said objections, in my considered opinion, the respondents 1 and 2 ought not to have granted licence in favour of the fourth respondent.

Accordingly, the Writ Petition is disposed of with a direction to the respondents 1 and 2 to consider the matter afresh after making due enquiry into the objections raised by the residents of the Ramakrishna Paradise Apartments with due notice to all the parties concerned including the writ petitioners and the 4th respondent and to pass appropriate orders in accordance with law keeping in view the legal position as noted above. Such exercise shall be completed within four weeks from the date of receipt of this order. Till such time, the sale of liquor by 4th respondent in the shop in question shall be stayed.

The Writ Petition is accordingly disposed of. However, as noted above, the Writ Petition shall stand dismissed against the respondent No.3. No costs.

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5th October, 2005.

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